

### **REMARKS**

Claims 86-116 are currently pending in the application. Of these, claims 93, 95-98 and 105-116 have previously been withdrawn from consideration and claims 86-116 were subject to restriction and/or election.

Applicants have canceled claims 86-92, 94, 99-104 and added new claims 117-130. Upon entry of the amendments, claims 117-130 will be pending and presented for examination.

### ***Election/Restrictions***

Claims 111-116 directed to an antibody are withdrawn from consideration because the Action takes the position that the originally filed claims were only to a GIP antagonist and that a related antibody is a distinct invention. The Examiner concludes that the originally presented invention has been constructively elected for prosecution. Applicants respectfully traverse and request reconsideration.

Applicants believe that they are entitled to claim a monoclonal antibody that recognizes the amino acid sequence of SEQ ID NO:5, for reasons of record. Because the Examiner has withdrawn the claims 111-116 in a final office action, Applicants retain the right to refile in a subsequent application without prejudice.

### ***New Claims***

New claims 117-130 are based on previously presented claims and are intended to avoid confusion and overcome prior rejections to claims 87-92, now canceled.

New claim 117 employs the term "consisting essentially of". This term limits the scope of a claim to the specified materials "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention, as stated in MPEP 2111.03, citing *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) with emphasis in the original.

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Accordingly, claims 118-122 and 126-130 and properly depend on claim 117 because the modifications to sequence number 5 retain the same basic and novel characteristics. For the same reason, claims 124-125 properly depend on claim 123.

Claim 123 is directed to screening for GIP antagonists as competitive inhibitors of the compounds related to the novel sequence of SEQ ID NO:5 that bind to GIP receptor. The screening process is novel because it employs a unique GIP antagonist to screen candidate compounds for antagonist activity.

Applicants have presented the new claims to better define a genus of compounds. One skilled in the art would have a reasonable expectation that the amino acid substitutions (one single neutral amino acid to replace another neutral amino acid) would be functional equivalents. This is because there would be no expected change in conformation or polarity due to the generally recognized equivalency of these neutral amino acids. In like manner, the substitution of his with lys (a basic residue) and asp with glu (acidic) would be expected to be equivalent substitutions. Applicants respectfully direct attention to the publications and argument submitted in their response to Office Action filed January 26, 2005 with respect to equivalencies recognized by those of skill in the art at the time the application was filed.

Applicants further believe that the claims are not unduly broad, that the number of compounds is limited to the indicated types and positions of the substitutions and that the polypeptide(s) claimed in the present application are defined by a definite length.

### **CONCLUSION**

Applicants submit that the application is in condition for allowance with claims 117-130.. Should any issues remain or should the Examiner believe that a telephone conference with Applicants' attorney would be helpful in expediting prosecution of this application, the Examiner is invited to contact the undersigned at the telephone number shown below.

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Respectfully submitted,

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By: Barbara S. Kitchell  
Barbara S. Kitchell  
Registration No. 33,928  
EDWARDS & ANGELL, LLP  
P.O. Box 55874  
Boston, MA 02205  
Attorneys for Applicants

Customer No.: 21,874